IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2097 OF 2007

1. Mahiboob Yuunus Zharekari,
2. Parvin Mahiboob Zharekari,
3. Khautn Yunnus Zharekari,
4. Sattar Yunnus Zharekari,
5. Rubina Sattar Zharekari,
6. Bilal Yunnus Zharekari. ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

Jaydeep S. Deo for the applicants.

Rajesh More, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 2nd November 2007.

P.C.:

. Heard learned counsel for the applicants and learned A.P.P. for the State.

2. The applicants are seeking bail in connection with C.R.No.77/2007 registered with Mohol Police Station, district- Solapur for the offences punishable under sections 302, 498-A read with sections 34 and

120-B of Indian Penal Code.

3. The prosecution case is that deceased Shahenaj was married with applicant No.6- Bilal Yunnus Zharekari in the month of October, 2006. The applicants used to ill treat and harass deceased Shahenaj. Applicant Nos.1 to 5 are the relatives of applicant No.6 and in-laws of deceased Shahenaj. On 21st February, 2007, all the applicants- accused were parties to the criminal conspiracy to commit murder of deceased Shahenaj by setting her on fire in their house at Budhwar Peth, Mohol, district- Solapur. So, on the basis of complaint dated 25th February, 2007, filed by complainant Shaikh Sattar Shaikh Madar Jargar, resident of Malegaon, who is father of deceased Shahenaj, crime came to be registered against applicants- accused. On the same day, applicants-accused came to be arrested and detained in jail.

4. The learned counsel for the applicants submits that at the time when the alleged offence took place, none of the male members of the family were at home and the lady members could not extinguish fire because it was not possible for them to go to the room on the upper floor since the approach was very narrow. He further submits that the applicants are in custody since February, 2007. Investigation is complete as such their custody is not necessary. Learned counsel

for the applicants further submits that due to mental instability, deceased Shahenaj committed suicide by setting herself ablaze and suffered 100% injury, as such, she died on the spot. He, thus, submits that all the applicants are falsely implicated on the basis of wild allegations made by the father of the deceased.

5. The learned A.P.P., appearing for the State, opposed this application for bail contending that the deceased Shahenaj died due to 100% burn sustained by her in her matrimonial house. All lady members were at home. None of them tried to extinguish fire and save her. He further submits that the offence is serious and none of the applicants is entitled to bail.

6. Having heard rival parties, the factual matrix reveals that marriage of the applicant No.6 with deceased Shahenaj was solemnized on 30th October, 2006 and within about a period of four months the subject event occurred. The defence sought to be put up that the deceased Shahenaj committed suicide by setting herself ablaze in the bedroom located on the second floor which has a narrow access. On the staircase

only one person can stand at a time. Assuming it to be so, it was not difficult to make attempt to save the deceased. However, at this stage, one has to consider the application for bail keeping in mind the nature of accusation and the severity of the punishment in case of conviction and the nature of supporting evidence together with the reasonable apprehension of tampering with the prosecution evidence and threat to the complainant.

7. Considered on the above backdrop, so far as female family members, viz, applicant Nos.2, 3 and 5 are concerned, they being women would need special consideration in view of first provision to section 437(1) of Cr.P.C., which provides that the Court may direct a person referred to in sub-clause (i) or sub-clause (ii) of sub-section (1), be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm. In this view of the matter, these three lady members can be enlarged on bail.

8. However, so far as male members are concerned, even though, they were not present at home at the time of incident, that by itself would not be sufficient

for them to claim regular bail, especially, looking to the allegations made, mode and manner of committing crime and seriousness thereof leading to the charge under section 302 read with sections 34 and 120-B of Indian Penal Code. Even there is no material on record to rebut presumption under section 113 of the Evidence Act.

9. In the circumstances of the case, so far as applicant Nos.1, 4 and 6 are concerned, their application for bail is stands rejected.

10. So far as applicant Nos.2, 3 and 5 are concerned, I am inclined to grant bail in their favour, for special reasons stated hereinabove, subject to the following conditions:

(a) The applicant No.2- Parvin Mahiboob Zharekari, applicant No.3- Khautn Yunnus Zharekari and applicant No.5- Rubina Sattar Zharekari, arrested in connection with C.R.No.77/2007 registered with Mohol Police Station, district- Solapur shall be enlarged on bail on their executing P.R.Bond of

Rs.25,000/- each with one separate solvent surety for each to make the said amount.

(b) The applicant Nos.2, 3 and 5 shall report to the concerned Police Station as and when called and shall co-operate with the investigating agency for disposal of the case.

(c) The order of bail will be given effect to only after the above applicants furnishes to the investigating officer the details about their places of residence and addresses where they propose to stay after they are enlarged on bail. The applicants shall not change their residential addresses thereafter till the conclusion of trial without prior intimation to the investigating officer.

(d) The applicants shall not directly or indirectly, make any inducement or threat or pressurise any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(e) It is needless to mention that breach

of any of the conditions by the applicants shall result in cancellation of bail.

(f) Any observation made in this order shall not be construed as finding or expression on merits of the case at the time of trial.

10. Application stands disposed of accordingly.

JUDGE